

**IN THE JUSTICE OF THE PEACE COURT NO. 16  
OF THE STATE OF DELAWARE IN AND  
FOR KENT COUNTY**

DELAWARE STATE HOUSING	:	C.A. No. JP16-10-002063
AUTHORITY, McLANE GARDENS,	:	
	:	
Plaintiff Below,	:	
Appellee,	:	
	:	
v.	:	
	:	
CAROLYN CROSSMAN,	:	
	:	
Defendant Below,	:	
Appellant.	:	

***TRIAL DE NOVO***

Submitted: August 17, 2010  
Decided: September 14, 2010

Jeffrey J. Clark, Esquire, Schmittinger & Rodriguez, P.A., Dover, Delaware.  
Attorney for the Plaintiff/Appellee.

Carolyn Crossman, Defendant/Appellant, appeared *pro se*.

***ORDER***

Arndt, Magistrate  
Murray, Magistrate  
Wall, Magistrate

On August 17, 2010, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray and the Honorable Robert B. Wall Jr., acting as a special court pursuant to 25 *Del. C.* § 5717(a)<sup>1</sup> held a trial *de novo* in reference to a Landlord/Tenant Summary Possession Petition filed by Delaware State Housing Authority/McLane Gardens (hereinafter referred to as “Plaintiff”), against Carolyn Crossman (hereinafter referred to as “Defendant”). For the following reasons the Court enters judgment in favor of the *Plaintiff*.

### **Factual and Procedural Background**

Plaintiff filed a Landlord/Tenant Summary Possession Petition<sup>2</sup> with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent and post-judgment interest at the current legal rate. This action is based on alleged criminal activity committed by the Defendant which is a violation of her lease agreement pursuant to paragraphs 8(l) and 8(m)(1) for which immediate termination is appropriate pursuant to paragraph 14(a)(2) and (5). Plaintiff asserts pursuant to 25 *Del. C.* § 5513(b) that this criminal conduct threatened the health, safety, and right to peaceful enjoyment by the other tenants of the public housing community.(also citing *Delaware State Housing Authority/Clarks Corner v.*

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<sup>1</sup> 25 *Del. C.* § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote...

<sup>2</sup> Plaintiff's petition was EFiled on 2010-05-03 11:25:46 and included attachments pursuant to 25 *Del. C.* § 5707.

*Howell*, Del. J. P., C.A. No. J0611006716, Arndt, J., Murray, J. and Pennella, J. (Sept. 14, 2007). On June 24, 2010, the Defendant was served with notice of said petition. Trial was scheduled on July 13, 2010, however was continued at the request of the Plaintiff as critical subpoena witnesses failed to appear for trial. Trial was rescheduled and held on August 2, 2010, at which time judgment was entered in favor of the Plaintiff.<sup>3</sup> On August 6, 2010, the Defendant filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Trial *de novo* was thereafter scheduled and held on August 17, 2010.

### **Plaintiff's Testimony and Evidence**

Plaintiff submitted without objection the lease agreement<sup>4</sup> between Delaware State Housing Authority and Carolyn Crossman which was signed and dated June 1, 2007.<sup>5</sup> Plaintiff submitted without objection a notice of termination letter<sup>6</sup> dated April 21, 2010, with a copy of the certificate of mailing<sup>7</sup> which was post marked April 21, 2010. Finally, Plaintiff submitted without objection an

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<sup>3</sup> *Delaware State Housing Authority/McLane Gardens v. Crossman*, Del. J.P., C.A. No. JP16-10-002063, Plack, J. (Aug. 2, 2010).

<sup>4</sup> Plaintiff's Exhibit #1.

<sup>5</sup> Lease agreement is for 307 McLane Gardens, Smyrna, DE. McLane Gardens is a Public Housing Community.

<sup>6</sup> Plaintiff's Exhibit #2.

<sup>7</sup> 25 *Del. C.* § 5113(b). **Service of notices or pleadings and process.** "... a copy of such notice or process may be sent by registered or certified mail or 1<sup>st</sup> mail as evidence by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises..."

Exhibit B (probable cause sheet) of the Defendant's arrest warrant issued on April 14, 2010.

Officer Raymond Armstrong (hereinafter referred to as Officer Armstrong) of the Smyrna Police Department was dispatched to McLane Gardens reference a criminal trespass complaint on April 14, 2010. Officer Armstrong testified to the following; He was advised that Terineka Cannon (hereinafter referred to as "Cannon") and Eddie Green (hereinafter referred to as "Green") were on the "banned list" from McLane Gardens and therefore were prohibited from McLane Gardens property. Upon his arrival, the Defendant approached him and stated that Cannon was allowed to be on the property. Based on the Defendant's assertion, Officer Armstrong went to the Manager's office to verify said claim. The Defendant followed. Officer Armstrong requested to speak to the Manager in private without the Defendant present and had to "almost push her out the door" in order to do so, and thereafter, he closed the door. The Manager, Nancy Hopkins (hereinafter referred to as "manager" or "management") verified that in fact, Cannon and Green were on the "banned list". Officer Armstrong exited the office and again he encountered the Defendant who began yelling profanities. Officer Armstrong stated that a group of 12-20 persons had gathered in the area and the group was comprised of both adults and children. The Defendant continued yelling profanity in a voice that was loud enough to be heard "throughout the entire

complex". Defendant called Officer Armstrong "a f\*\*\*ing retard cop" among other profane-laced statements. Officer Armstrong instructed the Defendant to refrain from using such language or he would have to arrest her. Defendant refused to stop using said language at which time Officer Armstrong radioed for back-up and attempted to place the Defendant under arrest. Officer Armstrong testified;

"I told her 3 times to place her hands behind her back. I attempted to grab her right arm. She pulled her arm away in a manner that appeared she was prepared to hit me. I had to pull my taser out."

Only after the threatened use of the taser and seeing other officers respond to the complex did the Defendant walk to Officer Armstrong's vehicle as instructed. Officer Armstrong arrested the Defendant for disorderly conduct, menacing, and resisting arrest.

### **Defendant's Testimony and Evidence**

Defendant asserts that she went to speak with Management at their request and that the Manager asked her to take a letter of notification banning Cannon<sup>8</sup> from the property and deliver it to Cannon, which she agreed to do. She inquired as to why Cannon was banned but the Manager would not share said information. Thereafter, she walked to apartment 304<sup>9</sup> where Cannon was

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<sup>8</sup> Terinka Cannon is the Defendant's niece.

<sup>9</sup> Apartment 304 is rented to the Defendant's daughter.

located. She stated; "I told Terinka she was banned and that she needed to leave. I asked Eddie Green to leave and he started cursing me, calling me names like Bitches." Thereafter, Defendant called Management in regards to Green's behavior towards her and Management stated they would contact the police.

Defendant states that Officer Duncan was the first to arrive on the scene followed by Officer Armstrong. She heard Officer Armstrong advising Cannon that she was banned at which time she informed the Officer that she was in the process of telling Cannon that she was banned from McLane Gardens just prior to his arrival.

Defendant then testified that she was at the Manager's office with Officer Armstrong and, "he pushed me out the door and slammed the door in my face." After returning from the office, Officer Armstrong,

"told me to go into the house. I stated, I am not a f\*\*\*ing child. All these people were around. I don't know where they came from. I was mad. I told my daughter, Come get this f\*\*\*ing phone! I told Armstrong, Don't grab me! I am walking to the car. This shit is wrong."

Defendant further stated that upon being detained in the holding room at Smyrna Police Department she threw a Bible from the holding room into the hallway in order to get the attention of an officer.

Under cross examination, Defendant admitted that her five-year-old grandson was in the crowd of people and heard her yelling profanity. She further

stated; “I raised my voice. I am emotional. I am a woman. I yelled.” Defendant indicated that Green was no relation to her and that he was cursing and threatening her.

### **Rebuttal Testimony**

Detective Brandon L. Dunning of the Smyrna Police Department testified that he was located approximately 15 feet away in another room from the Defendant when she was brought into the station for processing. He stated that on several occasions he could clearly hear the Defendant calling Officer Armstrong, “a f\*\*\*ing retard cop”. He characterized her behavior as “loud and agitated”.

Nancy Hopkins, housing manager for McLane Gardens, testified that for more than an hour she and the Defendant discussed why Cannon was banned from McLane Gardens property. Further, she stated that she did not view any inappropriate and/or unprofessional behavior by Officer Armstrong towards the Defendant while he was in her office.

### **Standard of Proof**

In order to determine if the Defendant should be evicted from her rental unit based on an allegation of criminal activity where the Defendant has not been convicted of a crime, the Court must apply the correct standard of proof to determine if criminal activity has taken place. The standard of proof and the

requirement of conviction are different for a public housing community versus a non-federally funded housing community or a privately owned rental unit.

Justice of the Peace Court Legal Memorandum 97-222 (REVISED)<sup>10</sup> addresses this issue which states in part:

Federal regulations state that in an eviction by judicial action, neither arrest nor conviction are required to prove criminal activity. 24 *CFR* § 966.4 (1)(5)(iii).<sup>11</sup> Nor must the standard of proof for a criminal conviction be used. *Id.* (Use of a civil standard proof is consistent with normal procedures in a summary possession action since such an action is civil in nature.)

The case law from other jurisdictions indicates that the appropriate civil standard is by “preponderance of the evidence” rather than the higher civil standard of “clear and convincing evidence” in cases involving eviction of public housing tenants. (In contrast, when a non-federally subsidized rental of a mobile home lot or lease is involved, 25 *Del. C.* § 7010(a)(3) provides that proof of a tenant’s violation of the rules and regulations of a mobile home park or any provision of subchapter I of chapter 70 of Title 25 must be “clear and convincing evidence”.)

The issue of which civil standard was applicable in public housing eviction cases based on criminal activity was addressed by the Massachusetts Supreme Judicial Court in *Spence v. Gormley*, 439 N.E. 2d 741 (Mass. 1982). The Court held that due process requires only a preponderance of the evidence rather than the higher civil standard of clear and convincing proof to prove criminal activity for purposes of eviction. In so finding, the Court stated that a tenant’s interest in her public housing tenancy is a protected interest, entitling

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<sup>10</sup> Legal Memorandum. 97-222 (REVISED), Del. J.P., Griffin, C.M. (April 3, 2002) at 3.

<sup>11</sup> This section states:

(A) Evidence. The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.



her to fair procedures before the government can terminate it. However, it is not a fundamental interest because “the right to public housing derives from no deeper source than the State’s undertaking to provide it.” *Id.* at 751.

The legal memorandum further states:

“... when a public housing authority does seek to evict a tenant pursuant to its lease provisions regarding criminal activity, the Court must apply a “strict liability” standard – holding the tenant responsible whether or not the tenant knew of, or should have known of, the activity.” *citing Department of Housing and Urban Development v. Rucker*, 2002 WL 451887, WL op. at 6.

### **Discussion**

The alleged criminal activity by the Defendant took place at McLane Gardens Apartments in Smyrna, DE, which is a public housing community and where the Defendant is a resident.<sup>12</sup> Defendant was arrested on charges of disorderly conduct, menacing, and resisting arrest. No testimony as to the final disposition of these charges was presented to the Court for its consideration. The Court applied the standard of preponderance of evidence to determine if the Defendant is guilty of the offenses for which she was arrested.

First, the Court addresses the charge of menacing in violation of 11 *Del. C.* § 602.<sup>13</sup> Officer Armstrong testified when attempting to effect an arrest of the

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<sup>12</sup> Black’s Law Dictionary, 6<sup>th</sup> Edition, West Publishing Co. (1990) **Resident**. The word “resident” when used as a noun, means a dweller, habitant or occupant; one who resides or dwells in a place for a period of more, or less duration; it signifies one having a residence, or one who resides or abides.

Defendant, the Defendant, “pulled her arm away in a manner that appeared she was prepared to hit me. I had to pull my taser out.” At this point Officer Armstrong radioed for back-up. Plaintiff’s exhibit #3 supports the Officer’s testimony and states the following in part:

“...D-1 still continued to use profanity and abusive language towards writer. Writer advised D-1 to put her hands behind her back she’s under arrest. Writer advised at least three time’s [sic] for D-1 to put her hands behind her back and she failed to comply with writer’s command while writer was attempting to make an [sic] lawful arrest. At one point when writer went to grab D-1’s arm to place her in custody D-1 pulled her arm away from writer and then made a movement with her right arm which she was holding a telephone and acted like she was going to strike writer with this phone causing writer in fear of injury.”<sup>14</sup>

Officer Armstrong’s testimony is consistent with his Exhibit B which he completed on the day that the incident occurred.

The Court is convinced by the Defendant’s testimony that she was in an agitated state of mind and not responding appropriately to Officer Armstrong’s instructions during this incident. Specifically, yelling at Officer Armstrong, “Don’t grab me! I am walking to the car.”, “I am not a f\*\*\*ing child.” And, telling her daughter; “Come grab this f\*\*\*ing phone.”

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<sup>13</sup> § 602(a). A person is guilty of menacing when by some movement of the body or any instrument the person intentionally places another person in fear of imminent physical injury.

<sup>14</sup> In Officer Armstrong’s Exhibit B, Probable Cause Sheet, he refers to himself as “writer” and the Defendant, Carolyn L. Crossman to as “D-1”.

Her continued refusal to comply with Officer Armstrong's instructions, her agitated state, and abusive language including the pulling of her arm with a phone in her hand in a motion which appeared that she was prepared to strike Officer Armstrong, placed him in fear of physical injury.

The Court is satisfied by a preponderance of evidence that the Defendant committed the act of menacing in violation of 11 *Del. C.* § 602.

Next the Court shall address the charge of disorderly conduct in violation of 11 *Del. C.* § 1301.<sup>15</sup> Both Officer Armstrong and the Defendant testified that a number of people<sup>16</sup> were present when this incident occurred. Officer Armstrong testified that the Defendant yelled numerous profanities which could be heard by other persons throughout the housing community. The Defendant's testimony confirms that she yelled profanities numerous times in the presence of other persons. i.e. "I am not a f\*\*\*ing child.", "Come grab this f\*\*\*ing phone." and "You are a f\*\*\*ing retard cop." The group included both adults and children.<sup>17</sup>

This Court is satisfied by a preponderance of evidence that the Defendant committed the act of disorderly conduct pursuant to 11 *Del. C.* § 1301. The Court finds her conduct to be tumultuous pursuant to subsection (1)(a) and she repeatedly

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<sup>15</sup> § 1301. (1)(a). Engaging in fighting or in violent, tumultuous or threatening behavior; or (1)(b). Making an unreasonable noise or an offensively coarse utterance, restore or display, or addressing abusive language to any person present; or

<sup>16</sup> Officer Armstrong testified, "...12-20 people had gathered in the area..." and the Defendant testified, "All these people were around."

<sup>17</sup> The Defendant admitted under cross examination that her five year old grandson was in the crowd and heard her yelling.

addressed abusive language and coarse utterances pursuant to subsection (1)(b) in the presence of other persons including children.

And, finally the charge of resisting arrest in violation of 11 *Del. C.* § 1257(b)<sup>18</sup>. Officer Armstrong advised the Defendant to stop using profanity or he would arrest her. She refused to stop and thereafter Officer Armstrong attempted to place her under arrest. Officer Armstrong instructed the Defendant three times to place her hands behind her back. Defendant pulled her arm away from the Officer while he was attempting to effect an arrest of herself. Officer Armstrong had to pull his taser to get compliance from the Defendant. Defendant by her own admission stated she was “mad” and told Officer Armstrong not to grab her.

The Court is satisfied by a preponderance of evidence that the Defendant committed the act of resisting arrest pursuant to 11 *Del. C.* § 1257(b).

The Defendant’s conduct on April 14, 2010, violated Delaware Criminal Code sections 11 *Del. C.* § 602, § 1257(b), and § 1301. This criminal conduct violated her lease agreement with the Delaware Housing Authority/McLane Gardens. Section 8(m)(1) states in pertinent part:

(1) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of Management’s public housing premises by other residents or by employees of Management,...Any criminal activity in violation of the

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<sup>18</sup> § 1257(b). A person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another or intentionally flees from a peace officer who is effecting an arrest.

preceding sentence shall be cause for termination of tenancy,  
and eviction from the leased premises....

As previously addressed in *Delaware State Housing Authority/Clarks Corner v. Howell*, (citation omitted), Black's Law Dictionary<sup>19</sup> defines peace as follows: "Term, within the law of breach of the peace, means tranquility enjoyed by the citizens of the municipality or community where good order reigns among its members." The Defendant's yelling profanities which could be heard throughout the housing community and her continued deterioration of conduct after being advised to stop using profanity led to Officer Armstrong effecting an arrest of herself; an arrest which she resisted. Thus, the Defendant violated section 8(m)(1) of her public housing lease agreement by engaging in; "... any criminal activity that threatens the health, safety, or **right to peaceful enjoyment** [emphasis added] of Management's public housing premises...." Her conduct was *not* conduct which lends itself to good order nor does this conduct promote tranquility within the housing community. This criminal conduct negatively impacts other tenants' right to peaceful enjoyment of the housing community.

Whereas the Defendant committed criminal activity which interrupted the other tenants' right to peaceful enjoyment of the housing community, the Plaintiff is entitled to immediately terminate the lease agreement and obtain possession of

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<sup>19</sup> Black's Law Dictionary, 6<sup>th</sup> Edition, West Publishing Co. (1990).

the Defendants rental unit (307 McLane Gardens) pursuant to paragraph 14(a)(2)<sup>20</sup> and (5)<sup>21</sup> of the lease agreement. Unlike non-federally funded housing communities or a privately owned rental unit, a criminal conviction *is not* required in order for the Plaintiff to immediately terminate the rental agreement and bring an action for summary possession as required pursuant to 25 Del. C. § 5513(b).<sup>22</sup>

Pursuant to 25 Del. C. § 5513, the Plaintiff notified the Defendant in writing by letter dated April 21, 2010, advising her that her lease was terminated as a result of her conduct resulting in criminal charges<sup>23</sup> on April 14, 2010. Defendant was advised that she must vacate the rental unit within seven (7) days or the Plaintiff would pursue an action for summary possession. Said letter was mailed certificate of mailing pursuant to 25 Del. C. § 5113(b) and post marked April 21, 2010, by the United States Post Office.

The Plaintiff requested accrued rent and post-judgment interest in their petition, however no testimony was provided as to the current rent charged to the

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<sup>20</sup> 14. Procedures for Termination of Lease. (a)(2) failure to fulfill the Tenant obligations set forth in Section 8 herein;

<sup>21</sup> 14. Procedures for Termination of Lease. (a)(5) either of the following types of criminal activity by Tenant, any member of the household, a guest, or another person under Tenant's control, shall be cause for termination of tenancy; any criminal activity or alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of Management's public housing premises or seizure of weapons or illegal drugs in a Tenant's unit by a law enforcement officer;

<sup>22</sup> § 5513(b). When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provide in section (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

<sup>23</sup> Whereas the breach is based on criminal activity and occurred in a public housing community, the landlord is not required to provide the tenant with seven (7) days to cure the conduct as is normally required by § 5513.

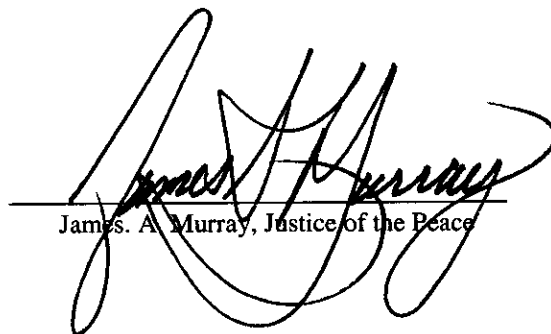
Defendant. Plaintiff's exhibit #1, section 2(a), does provide for rent in the amount of \$387.00 per month<sup>24</sup>, however the Court cannot determine if the amount of rent has increased, decreased, or remained the same since the inception of the lease due to the lack of testimony regarding same. Therefore, the Court shall not award any accrued rent or post-judgment interest.

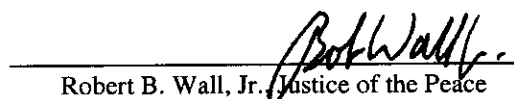
### Conclusion

Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict hereby enters ***Judgment for the Plaintiff***. Plaintiff is awarded *Possession of 307 McLane Gardens, Smyrna, DE and court cost of \$40.00.*

**IT IS SO ORDERED, this 14<sup>th</sup> day of September, 2010.**

  
Ernst M. Arndt, Justice of the Peace

  
James A. Murray, Justice of the Peace

  
Robert B. Wall, Jr., Justice of the Peace

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<sup>24</sup> The lease agreement is dated June 1, 2007.